IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1572 of 1982

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMED TAYAB MOHAMED HUSEIN

Versus

SAKINA GULAMNABI

Appearance:

NOTICE UNSERVED for Petitioner No. 1

MR JJ SHAH for Petitioner No. 1

MR DF AMIN for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. This is the revision application under section 29(2) of the Bombay Rent Act, at the instance of the original tenant who was a defendant in a suit filed by the present opponents under the provisions of the Bombay Rent Act viz. HRP Suit No.515/77. The trial court was pleased to dismiss the suit so far as the landlords'

claim for possession is concerned, but passed a money decree in terms of arrears of rent.

2. Against the aforesaid decree passed by the trial court, opponent nos.1, 2 and 3 (plaintiffs-landlords) preferred an appeal under section 29(1) of the Bombay Rent Act being Civil Appeal No.129/79, which was allowed to the extent that the defendants-tenants were directed to hand-over possession of the lease premises to the landlords-plaintiffs. The lower appellate court, however, modified the decree so far as arrears of rent due to the landlords is concerned, by decreasing the amount due to the landlords by observing that no decree for time-barred rent can be passed. It is this appellate judgement and decree which is the subject matter of the present revision at the instance of the original-defendant-tenant.

3. When this revision was filed in the year 1982, the applicants were represented by advocate Mr. J.J. Shah, who subsequently expired and consequently notice was issued to the petitioner to engage another advocate. However, since a long time and in spite of various orders being passed by this court, the petitioner is not yet served. However, the record indicates that possession has already been handed over by the present applicant to the surviving landlords. Out of the three original landlords, two have expired, and only opponent no.2 survives as the sole landlord. Furthermore, although both the courts below have granted a decree in favour of the landlords so far as possession is concerned, the same cannot be the subject matter of challenge in the present revision inasmuch as possession has already been handed over by the applicant to the landlord pursuant to the interim order passed by this court on 7th July 1983. The only question which now survives is a question of difference between the trial court decree and the appellate court decree as regards the arrears of rent. However, when this revision was admitted by order dated 16th September 1982, only notice for interim relief was issued, without granting any interim relief. By subsequent interim order dated 7th July 1983 this Court permitted the execution of the decree as to possession as also permitted execution as to the amount of arrears due to the landlord as decreed by the trial court. Hence, in view of the present circumstances it would appear that after a lapse of almost 20 years there is no substantive issue which survives for adjudication in the present matter. This revision is, therefore, dismissed and rule is discharged with no order as to costs. Ad interim relief stands vacated.

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